IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5651 OF 2005

Mr. Ramsubak Gaya Kewat ... Petitioner

V/s

Digvijay Textile Mills Ltd. ... Respondent

Mr. N.M. Ganguli for the petitioner.

Mr. K.S. Bapat with Avinash Fatangare for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 2ND FEBRUARY, 2006

P.C.:

1. The petitioner has preferred this petition challenging the order of the Industrial Court dated 31.1.2001 dismissing his Appeal (IC) No. 32 of 1997 and confirming the order passed by the Labour Court dismissing the Misc. Application (BIR) No. 4 of 1989 for condonation of delay and restoration of his application.

2. I have heard the learned counsel for both parties. Perused the record.

3. The petitioner had filed the application for restoration of his Application (BIR) No. 316 of 1986 which was dismissed for default on 12.11.1987. The Trial Court, after hearing both parties and perusing the entire evidence on record, was of the view that there was no sufficient and proper explanation coming-forth from the petitioner and, as such, the application for restoration of Application (BIR) No. 316 of 1986 came to be dismissed. The appeal was preferred by the petitioner before the Industrial Court, Mumbai under Sec. 84 of the B.I.R. Act.

4. After hearing both parties, the lower appellate Court was of the view that the appellant had not given any justifiable ground for restoration of the original application and, therefore, the order passed by the lower Court was just, legal and proper and, as such, the appeal came to be dismissed. Hence the present petition.

5. At the outset it may be noted that the original application was dismissed in the year 1987, whereas the restoration application was filed in the month of January, 1989 and hence there was already delay. The grounds mentioned by the petitioner were to the effect

that due to his illness he could not come to Bombay as he had gone to his native in Uttar Pradesh where he fell ill and was suffering from jaundice and hospitalized for considerable long time. However, while appreciating the evidence on record, both the Courts below have come to the conclusion that the so-called explanation given for the petitioner's absence was not convincing nor sufficient and, therefore, could not be accepted as true.

6. The learned counsel for the petitioner submitted that in such cases liberal approach should be adhered to and matter should have been restored for hearing on merits. No doubt that in appropriate cases liberal approach is definitely called for, however, in the present case the explanation given and the grounds mentioned are not at all satisfactory and concurrent findings of both the Courts below endorse to the effect that the grounds mentioned in the application are doubtful.

7. Under the circumstances, I do not see any reason to interfere in the order passed by the lower appellate Court and, as such, the petition stands dismissed with no order as to costs.

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